S.B.CIVIL MISC. APPEAL NO.601/2006
(Oriental Insurance Company Ltd. Vs. Dau Manihar & ors.)

DATED : 10.08.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Dinesh Mehta for the appellant

By way of this appeal under Section 173 of the Motor Vehicles Act, 1988, the insurer of the vehicle involved in accident seeks to question the award dated 15.10.2005 made by the Motor Accidents Claims Tribunal [ADJ (FT) No. 4], Jodhpur in Claim Case No. 788/2004 awarding a sum of Rs. 25,000/- as compensation to the claimant-respondent No.1 for the loss of his goods in the accident; essentially on the ground that the risk regarding the goods carried in the vehicle was not covered under the policy of insurance taken by the owner of the vehicle.

At about 11.30 p.m. on 16.04.1999 on Jodhpur-Nagaur Road, nearly one kilometre from Baori towards Jodhpur, a truck bearing registration No. RNO 1421 and a gas tanker bearing registration No. HR 38 A 9798 collided putting the tanker on fire; and another truck bearing registration NO. RJ 07 G 2781 belonging to the non-applicant No. 8, driven by the non-applicant No. 7 and insured by the appellant (non-applicant No. 9), carrying the goods of the claimants too was caught in the same fire, destroying the goods. Narrating the

incident and attributing the resultant loss to the fault of the drivers of all the three vehicles, the claimant claimed compensation of the alleged value of the goods in the sum of Rs. 65,746/- against the drivers, owners and insurers of the vehicles. Separate replies were submitted respectively by the driver and insurer of the first truck aforesaid and so also by the insurer of the gas tanker. However, for the purpose of this appeal suffice it to notice that the owner of the third vehicle, non-applicant No. 8 also submitted separate reply denying any fault on the part of his driver and alleged that the fire engulfed the truck in question though stationed at a distance and attributed the loss to the act of God. The appellant insurer alleged that the accident occurred for the fault of the first two vehicles and raised defences against its liability including violation of policy conditions and also submitted that its insurance coverage was only under B-Policy; and for the goods transported, the insured was required to obtain transit policy and in its absence no liability could be fastened on the insurer for the loss caused to the goods in transit. This part of the objection of the appellant about want of coverage seems to have not gone in issues as such because the Tribunal framed the following issues:-

"1. आया दिनांक 16.04.99 को रात्रि के करीब 11.30 बजे जोधपुर-बीकानेर लोक मार्ग पर पुलिस थाना खेड़ापा के बावड़ी गांव से पहले सिटी होटल के पास ट्रक संख्या आर जे 07/जी/2781, आर एन ओ 1421, टैंकर संख्या एच आर 38 ए 9798 के चालक संख्या क्रमश: 7, 1 व 4 के द्वारा अपने अपने वाहनों को उपेक्षा/लापरवाही व तेज गति से चला कर की गई दुर्घटना में प्रार्थी का रेडिमेड कपड़ों का माल, जो कि ट्रक संख्या आर जे 07/जी/2781 में था, जल कर नष्ट हो गया?

2. क्या उक्त वाहन चालकों के द्वारा उक्त वाहन उनके वाहन स्वामियों के नियोजन में होकर उनके हितार्थ, लाभार्थ कार्य नहीं कर रहे थे ?

3. आया विपक्षी संख्या 3 ,6 व 8 बीमा कम्पनी द्वारा अपने लिखित कथनों की प्रारम्भिक आपत्तियों एवं विशेष कथनों के मद्दे नजर व वक्त दुर्घटना विपक्षी चालकों के पास वैध व प्रभावी ड्राईविंग लाईसेंस नहीं था, क्या बीमा कम्पनी अपने दायित्व से मुक्त हो सकती है, नहीं तो इसका प्रभाव ?

4. आया दावेदार अपने दावे में अंकित प्रश्नगत राशि अन्य कोई न्याय सम्मत राशि प्राप्त करने का अधिकारी है, यदि हॉ तो दावेदार कितनी-कितनी राशि, किस-किस विपक्षी से एवं किस प्रकार से पा सकता हैं?"

Be that as it may, the fact remains that only the claimant has been examined in this case as AW-1, who had also produced documentary evidence and else, none of the non-applicants, including the present appellant, produced any evidence.

Learned Judge of the Tribunal, after examining the evidence available on record, has held in issue No. 1 that the accident in question causing damage to the goods of the claimant was a result of the fault and negligence of the driver of the vehicle RJ 07 G 2781 who could have prevented the

accident by staying put at a safe distance after having seen the first accident and the fire; but he negligently took the vehicle to the scene letting it caught in the fire. Both issues Nos. 2 & 3 have been decided against the insurers with the observations that they have not produced any evidence. On quantification, the learned Judge noticed the statement of the claimant that he sent the goods to various destinations through Prem Krishna Transport in the truck RJ 07 G 2781 and the goods were destroyed by the said fire. However, the learned Judge noticed that the bilties Ex. 3 to 7 do not give out the value of the goods, nor the persons concerned with the said transporter were examined. In this view of the matter the learned Judge considered it proper to award compensation in the sum of Rs. 25,000/- to the claimant with interest at the rate of 7.5% per annum from the date of filing of the claim application and mulcted entire liability on the appellant being the insurer of the vehicle in question i.e. the truck RJ 07 G 2781.

Learned counsel Mr. Dinesh Mehta arguing for the appellant contented that the appellant has specifically urged that the loss to the goods in transit was not covered under the insurance in question and the learned Judge of Tribunal has been in error in fastening the liability upon the appellant. Learned counsel also contended that even quantum of

compensation awarded in the sum of Rs. 25,000/- is based on no evidence and the impugned award, therefore, deserves to be set aside.

Having given thoughtful consideration to the submission of the learned counsel and having examined the record of the case, this court is satisfied that this appeal remains absolutely bereft of substance and deserves to be dismissed without being admitted.

As noticed above, no issue specifically with reference to the defence of want of insurance coverage of the loss in question was framed; and yet the appellant insurer never even bothered to have such issue framed for consideration of the question sought to be raised in this appeal. The appellant insurer did not lead any evidence to substantiate any of the defence plea sought to be adopted or pressed by it. Moreover, having examined the Certificate of Insurance Ex. 15, this court is satisfied that the plea of want of coverage is fundamentally baseless and has no merit.

The Certificate of Insurance Ex. 15 makes it clear that in its Schedule of Premium, after charging Rs. 9284/- in column A for ‘own damage’, the appellant has charged the premium from the insured in column B at Rs. 2779/- for ‘liability to public risk’ and therein are added two additional premium of Rs. 90/- and Rs. 75/- respectively; and the later one is mentioned

against the heading “for increased property damage limits under Section II-1(ii)…”. The appellant has never explained such charges of additional premium and there appears no reason not to believe that such additional charges were meant to cover the loss caused to the property carried. In any case, in the absence of its evidence, the insurer does not appear justified in seeking to suggest that the liability in relation to the loss in question cannot be fasten upon it when the factum of insurance is not in dispute.

Quantum of compensation of Rs. 25,000/- cannot be said to be excessive. By the goods receipts Exhibits 3 to 7 it is but apparent that at least five cartons of readymade garments were loaded by the claimant for transportation; and the fact of their loss is admitted by the transporter too in its letter Exhibit 2. The Tribunal has yet not allowed the value of goods as stated by the claimant in the claim application and in his letter Exhibit 1; and has awarded rather lower side amount of Rs. 25,000/- only. There appears no reason to make reduction in the award amount.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI),J.

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